

Application No.: 09/845,486

Docket No.: 00-4064

REMARKS

Claims 1, 3, 6-10, and 12-35 are pending. The Office Action Summary erroneously indicates claims 1-35 are pending. Claims 1, 9, 10, 18, 23, 28, 30, and 34 are independent claims. In the Office Action, claims 1, 3, 6-10, 28-30, and 35 were rejected under 35 U.S.C. § 103 as allegedly unpatentable over US 5,812,638 ("Muller") in view of US 6,263,066 ("Shtivelman"). Claims 18-27 and 31-33 were rejected under 35 U.S.C. § 103 as allegedly unpatentable over Muller in view of Shtivelman and further in view of US 5,991,390 ("Booton").

Applicants thank Examiner Agdeppa for the courtesy extended during the July 19, 2005 personal interview with Applicants' representative. While no agreement regarding the allowability of any pending claims was reached, the Examiner agreed that the presently cited prior art is insufficient to maintain the pending rejections of Applicants' claims. Accordingly, no claims are amended or canceled by way of this response. In light of the following remarks, Applicants respectfully submit that all pending claims are in condition for allowance.

I. "unique call identifier"

Independent claims 1, 9, 28, 30, and 34 were each rejected under Section 103 as obvious over Muller in view of Shtivelman. These claims each recite, among other limitations, "*assigning a unique call identifier to the incoming call.*" Claims 1, 9, 30, and 34 further recite audio input "*associated with the unique call identifier.*" The Examiner acknowledges that "Muller does not teach assigning a unique call identifier to the incoming call"¹ (Office Action, page 4), and entirely fails to address the claim limitations requiring audio input "*associated with the unique call identifier.*" Moreover, the Examiner attempts to use Shtivelman to cure Muller's acknowledged deficiencies even though Shtivelman itself nowhere teaches or suggests assigning a unique call identifier to a call. Accordingly, the Examiner has failed to state a *prima facie* case of obviousness at least because the cited references do not teach each and every recited claim

¹ The Examiner also appears to argue in the alternative that Muller inherently requires a unique call identifier because "it is . . . inherent that some call identifier is associated with the call." (Office Action, page 3.) However, as stated in Applicants' Amendment filed December 28, 2004, the accompanying Remarks of which are fully incorporated herein by reference, Muller contains no teaching or suggestion that would inherently require assigning a unique call identifier.

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limitation. In addition, the Examiner has failed to provide a motivation in either reference to combine them, and thus has failed to state a *prima facie* case of obviousness for at least this further reason. See MPEP § 2143; *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1444 (Fed. Cir. 1991); *In re Royka*, 490 F.2d 981, 180 USPQ 560, 562 (CCPA 1972). Because the rejections of all pending claims depends on the alleged combination of Muller and Shtivelman, all rejections set forth in the Office Action should be withdrawn.

A. Shtivelman's failure to teach "assigning a unique call identifier to the incoming call"

Shtivelman clearly does not teach or suggest assigning a unique identifier to a call. As the Examiner notes (Office Action, page 4), Shtivelman discloses several methods for prioritizing and queuing calls. However, the Examiner has not shown that any of these methods necessarily requires or suggests assigning a unique identifier to a call. At most, as the portions of Shtivelman cited by the Examiner make clear, Shtivelman teaches no more than associating a multimedia message with the record of a communication. (Shtivelman, col. 9, lines 19-67.) Shtivelman is wholly silent as to how this association is made, and there is absolutely no teaching or suggestion in Shtivelman of assigning unique identifiers to either the multimedia messages or the records of communications, much less to incoming calls.

The Examiner appears to acknowledge that, like Muller, Shtivelman does not teach assigning a unique call identifier to a call because the Examiner explains that Shtivelman teaches "well known queuing methods" such as "priority queuing/queuing according to agents' skills, etc." (Office Action, page 4.) Allegedly, "[s]uch well known queuing means queue calls not only in a first-in-first-out basis," and "[t]herefore assigning a unique identifier to the call or using a unique identifier already present in the call such as the ANI or caller ID is inherent." That is, the Examiner's argument boils down to the reasoning that, because there allegedly were other well known means of queuing besides "first-in-first-out," assigning a unique identifier to a call is inherent in the prior art. Applicants respectfully submit that the mere fact that calls are prioritized in some fashion does not require or even suggest assigning a unique identifier to a call. In fact, placing calls in a queue means that a unique identifier is not necessary because calls will be handled out of the queue and not according to any assigned identifier. Thus, Shtivelman actually teaches away from this element of the claims.

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Further, the Examiner contends that Shtivelman's teaching of rearranging the order of calls in a queue inherently requires a unique identifier. (Office Action, page 10.) However, Shtivelman is entirely silent as to how this "bumping" is conducted. (See col. 9: 35-42.) There is no requirement in Shtivelman that records in a queue be assigned a unique identifier, even if such records are to be rearranged. It is undisputed that ways are well known in which records in a data structure may be rearranged without assigning a unique identifier; therefore, the Examiner has not met his burden of establishing the inherency of unique identifiers, and the rejection based on the alleged combination of Muller and Shtivelman cannot stand.

Thus, for at least the foregoing independent reason, independent claims 1, 9, 28, 30 and 34 are patentable over the prior art of record. Furthermore, dependent claims 3, 6-8, 11-17, 29, 31-33, and 35 are patentable at least by reason of their dependence on the foregoing independent claims.

B. Examiner's failure to address audio input "associated with the unique call identifier"

Claims 1, 9, 30, and 34 recite audio input "associated with the unique call identifier." The Office Action wholly fails to address this limitation, and is instead confined to "assigning a unique call identifier to an incoming call." (Office Action, page 4.) Rather, the Office Action simply asserts that Muller teaches recording and storing audio input. (*Id.*, pages 2-3.) Indeed, Muller plainly does not teach or suggest audio input "associated with the unique call identifier." Moreover, Shtivelman teaches voice mail as an alternative to completing a live call (e.g., Abstract), and thus clearly does not teach or suggest associating an audio file with a live call, much less use of a unique identifier to make such an association.

Accordingly, the rejection of independent claims 1, 9, 30, and 34 should be withdrawn for at least these reasons, as should the rejections of dependent claims 3, 6-8, 11-17, 31-33, and 35.

C. Lack of motivation to combine Muller and Shtivelman

The Examiner's stated motivation for combining Muller and Shtivelman is that

the queuing means [disclosed in Shtivelman] are old and well known and qualify as standard queuing means, which are at least contemplated by Muller. Moreover, ACD/call center calls routinely monitor calls for agent performance, store calls for

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statistical purposes, etc. For many years now, a caller, before being connected to an agent, will hear an announcement indicating that the call may be recorded for . . . various purposes. If no call identifier were assigned to these calls there would be no way to later retrieve these calls. (Office Action, page 5.)

As an initial matter, Applicants previously noted that the Examiner appears to have taken Official Notice as to what queuing methods are old and well known, as well as to the alleged fact that call centers "routinely monitor calls". Accordingly, Applicants seasonably requested that the Examiner provide documentary evidence to support the taking of Official Notice as is required by 37 CFR § 1.104(d)(2) and MPEP § 2144.03. However, such support is not provided in the Office Action. Accordingly, inasmuch as the rejections of all pending claims depend on the alleged combination of Muller and Shtivelman, all rejections set forth in the Office Action should be withdrawn at least because the taking of Official Notice has not been supported.

Further, neither Muller nor Shtivelman contains even a suggestion that assigning a unique identifier to an incoming call would be desirable. The Examiner's allegation that "standard queuing means . . . are at least contemplated by Muller" (Office Action, page 5) surely does not rise to the level of a motivation to assign a unique identifier to an incoming call. Similarly, the mere fact that Shtivelman may teach various queuing methods by no means suggests unique identifiers assigned to incoming calls.

Thus, for at least the foregoing second independent reason, independent claims 1, 9, 28, 30, and 34 are patentable over the prior art of record. Furthermore, dependent claims 3, 6-8, 11-17, 29, 31-33, and 35 are similarly patentable.

D. Inability to combine Muller and Shtivelman

A *prima facie* case of obviousness requires a reasonable expectation of success in combining references, and the Examiner has made no such showing in the instant case. Moreover, it is plain that the alleged combination of Muller and Shtivelman, on its face, could not succeed. Muller teaches a directory assistance system in which information from an incoming caller is recorded and replayed to an operator before the incoming call is connected to an operator. (E.g., Fig 4.) Shtivelman, in contrast, teaches voice mail as an alternative to completing a live call. (E.g., Abstract.) Thus, even if Shtivelman did teach assigning unique identifiers to his voicemail messages, which he does not, modifying Muller with this alleged

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teaching of Shtivelman would result at most in a system in which voice mail messages, but not audio input associated with live calls, was associated with audio input. Accordingly, the Examiner has not, and cannot, show a reasonable expectation of success in combining Muller and Shtivelman, and this is a further reason why the rejections of all pending claims should be withdrawn.

II. Indication “that the available service agent has heard the recorded audio input”

Dependent claims 21, 24, and 33 were rejected under Section 103 as obvious over Muller in view of Shtivelman and further in view of Booton. Dependent claim 35 was rejected under Section 103 as obvious over Muller in view of Shtivelman. Claims 21 and 24 recite that “the voice response device is further configured to wait for an acknowledgement that indicates that the available service agent has heard the recorded audio input”. Claims 33 and 35 similarly recite that “waiting for an acknowledgement that indicates that the available service agent has heard the audio input”. The Examiner acknowledges (Office Action, page 6) that Muller does not teach this claim limitation, but rather teaches manipulating the timing of audio input to match the time it takes an agent to process recorded information. The Examiner does not suggest that either Shtivelman or Booton teach waiting for an acknowledgement that indicates that the available service agent has heard the audio input. Further, Muller clearly teaches against Applicants’ recited limitation, inasmuch as in Muller’s system there would be no reason to wait for an acknowledgement that audio input has been heard.

Moreover, the Examiner has plainly failed to state a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35, for at least two reasons. First, the Examiner has provided no prior art reference teaching an acknowledgement of audio input before a call is connected. Second, even if the prior art did teach or suggest such a limitation, the Examiner has provided no support in the prior art for any motivation to modify Muller with this limitation. At most, the Examiner contends that Muller provides such motivation because “there would be no purpose in connecting the caller to the operator/agent before they had heard the recorded audio input.” Accepting the Examiner’s contention *arguendo* as true, the Examiner still has identified no teaching or suggestion in Muller – or in any other prior art reference – that waiting for an acknowledgement before a call is connected is a desirable way to ensure that a service agent has

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had the opportunity to hear available input. Further, Muller is incapable of the proposed modification because Muller allows no opportunity for an acknowledgement of audio input.

Moreover, to the extent that the Examiner believes that support for a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35 is found in the prior art or is supported by Official Notice, Applicants respectfully requested that the Examiner provide documentary evidence of this support in the form of a prior art reference or affidavit pursuant to 37 CFR § 1.104(d)(2) and MPEP § 2144.04. However, no such support has been provided, and the Examiner has clearly failed to state a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35.

Accordingly, dependent claims 21, 24, 33, and 35 are separately patentable for at least the foregoing reasons.

III. “switching device”

Claim 1 recites “transferring the incoming call from the voice response device (VRU) back to the switching device.” Similarly, claim 10 recites “a voice response device configured to receive the incoming call from the switching device and to route the incoming call to a voice response device” as well as “a voice response device configured to receive the incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, and send the incoming call to the switching device for transmitting to an available one of the service agents.” Claims 18 and 23 each recite, among other limitations, “a switching device configured to receive an incoming call from a caller.” Thus, the present claims clearly require a switching device that sends and receives calls within the inventive system, as well as receives calls from without the system. Muller, in contrast, teaches unidirectional processing of incoming calls. (See Figures 2-5.) According to Muller, as set forth above, the incoming call is prompted, recorded, placed in the queuing system 28, and then provided to the operator.

Accordingly, even if the Examiner is correct that “any system that can receive an incoming call has a switching device of some sort that actually receives the call” (Office Action, page 2), it is irrelevant whether Muller teaches such a system because Muller clearly does not teach or suggest the bi-directional communications required by claims 1 and 10. These claims

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require receiving an incoming call at a switching device, routing the call to the voice response device, storing the audio input in a file associated with the unique call identifier; and transferring the incoming call from the voice response device *back to the switching device*. Thus, there is *bi-directional* communication between the Automated Call Distributor/Private Branch exchange (ACD/PBX) 130 and the Voice Response Unit (VRU) 140. There is no teaching or suggestion that the system disclosed by Muller includes bi-directional communication between the queuing system and the recording system 22.

In fact, Muller teaches away from the bi-directional communication required by claims 1 and 10 in that an object of Muller's invention is to "increase customer satisfaction by reducing operator response time." (Col. 1, lines 43-44.) Incorporating bi-directional communications between Muller's queuing system 28 and recording system 22 would negatively impact the speed at which incoming calls are processed. As such, regardless of whether the Examiner is correct that a switching device is inherent in receiving a telephony call (Office Action, page 2), clearly it is not inherent that there be bi-directional communication between the ACD/PBX 130 and the VRU 140.

Significantly, the Examiner appears to have abandoned the contention that Muller teaches the bi-directional communication required by Applicants' claims, and now apparently contends that Shtivelman teaches such bi-directional communication. (Office Action, page 12.) However, as noted above, the Examiner has failed to present a *prima facie* case of obviousness for the combination of Muller and Shtivelman. Moreover, Shtivelman cannot teach transferring an incoming call back to a switching device, etc., as is required by Applicants' claims, because Shtivelman teaches a call being simply received, whether into voice mail or as a live call. (E.g., col. 5: 24-28.) Once Shtivelman's agent receives a voice mail, the agent must actually place a call back to the caller; there is no call to be transferred back to a switch. (See col.8: 5-25.) Moreover, even if Shtivelman did teach the afore-mentioned claim limitations the Examiner has not stated, much less provided support from the prior art of record, for motivation to have modified Muller with Shtivelman's alleged teaching.

For at least the foregoing reasons, independent claims 1, 10, 18, and 23 are patentable over Muller. Further, claims 3, 6-8, 11-17, 19-22, and 24-27 are patentable at least by reason of

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their dependence on one of the foregoing independent claims.

CONCLUSION

In addition to the arguments set forth above, Applicants reserve the right to present arguments demonstrating the separate patentability of each of their dependent claims. Further, in view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 07-2347, under Order No. 00-4064 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged against this Deposit Account.

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